UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
PARK, JEONG S

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/682,636	DAVIS ET AL.
	Examiner	**Art Unit**	
	JEONG S. PARK	2454	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 January 2010*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-18,20-34 and 36-49* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4, 6-16, 18, 20-32, 34 and 36-49* is/are rejected.

7)☒ Claim(s) *3,17 and 33* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/11/2010*.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/11/2010 has been entered.

2.   This communication is in response to Application No. 10/682,636 filed on 10/8/2003. The amendment presented on 1/11/2010, which amends claims 1, 4, 15, 17, 18, 29, 33, and 34, and cancels claims 5, 9, and 35, is hereby acknowledged. Claims 1-4, 6-18, 20-34, and 36-49 have been examined.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.   Claims 1-4, 6-18, and 20-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be

performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular

machine, or (2) transform underlying subject matter (such as an article or material) to a

different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant

claims are neither positively tied to a particular machine that accomplishes the claimed

method steps nor transform underlying subject matter, and therefore do not qualify as a

statutory process.   The method of providing a learned upload time estimate including

steps of reviewing, determining, obtaining, and computing is broad enough that the

claim could be completely performed mentally, verbally or without a machine nor is any

transformation apparent.

Claim 15 is drawn to a method for tacking historical uploading information, which

are neither positively tied to a particular machine that accomplishes the claimed method

steps nor transform underlying subject matter, and therefore do not qualify as a

statutory process.

Claims 2-4, 6-14, 16-18, and 20-28, which are dependent on claim 1 and 15

respectively, are rejected for similar reasons as stated above.

Correction is required.

Allowable Subject Matter

5.   Claims 3, 17, and 33 are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Response to Arguments

6.   Applicant's arguments with respect to claims 1-4, 6-18, 20-34, and 36-49 have

been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 1, 2, 4, 10-16, 18, 24-29, 31, 32, 34, and 40-44 are rejected under 35

U.S.C. 103(a) as being unpatentable over Chmaytelli et al. (hereinafter Chmaytelli)((US

Pub. No. 2002/0194325 A1) in view of Hamamoto et al. (hereinafter Hamamoto)(US

Patent No. 6,622,151 B1), and further in view of Cordell et al. (hereinafter Cordell)(U.S.

Patent No. 5,778,372).

Regarding claims 1 and 29, Chmaytelli teaches as follows:

A method for providing a learned upload (equivalent to download) time estimate

(estimation of user-specific length of time required to download application program,

see, e.g., abstract), comprising:

reviewing historical uploading information for more than one previous uploads,

wherein for each previous upload the historical uploading information includes a

previous upload size and an upload start marker (the estimated length of time to

download is based on data transfer rates calculated during a set period of time prior to

the download request, see, e.g., page 2, paragraph [0018]);

computing an average transfer rate from the historical uploading information for the one or more previous uploads (the estimated length of time to download is based on data transfer rates calculated during a set period of time prior to the download request, see, e.g., page 2, paragraph [0018] and page 6, paragraph [0070] and figure 5a), and deriving from the average transfer rate and upload size an upload time estimate for the files presently selected for uploading and providing the upload time estimate to a user (see, e.g., page 7, paragraph [0086]); and

determining the average data transfer time (see, e.g., page 4, paragraph [0047]).

Chmaytelli does not teach of determining a match between uploading information and the historical uploading information, or searching a particular previous upload.

Hamamoto teaches as follows:

The history of file transfer (interpreted as applicant's historical uploading information) is controlled and managed by using the service-management-book unit (13 in figure 1)(see, e.g., col. 12, lines 15-20);

the service-management-book unit includes transfer start time, transfer end time and data size for registration and management purpose(see, e.g., col. 6, line 63 to col. 7, lines 20 and figure 3);

the items for service search are used when searching for a specified service such as file transfer results indicating a start/end time of file transfer and a data size of file transfer (see, e.g., col. 7, lines 21-41);

determining if there is a match or likeness between uploading information, including a new upload start marker and an upload size, in total, of one or more files presently selected for uploading, and the historical uploading information for any of the previous uploads (search unit,12 in figure 1, searches the matched search results from the service-management-unit comparing a search condition and reflects the search results, see, e.g., col. 9, lines 1-36);

obtaining the total time of the particular previous upload using its historical uploading information (the items for service search are used when searching for a specified service such as file transfer results indicating a start/end time of file transfer and a data size of file transfer, see, e.g., col. 7, lines 21-41); and

using the total time as the upload time estimate for the files presently selected for uploading (search unit,12 in figure 1, searches the matched search results from the service-management-unit comparing a search condition and reflects the search results, see, e.g., col. 9, lines 1-36]).

It would be obvious to a person skilled in the art at the time of the invention was made combine Hamamoto with Chmaytelli in order to effectively collect and manage data transfer operations.

Chmaytelli in view of Hamamoto does not teach of finding a particular previous upload from the historical uploading information and estimating the particular previous upload time for current uploading.

Cordell teaches as follows:

The browser estimates resource downloading time from the most recent historic time (the browser preferably bases the estimate on the historic time or times for creating the most recent and preferably still existing persistent connections to the same remote site, see, e.g., col. 12, line 66 to col. 13, line 23); and

the browser times downloading of resources on the existing persistent connection and records the time. If multiple resources already have been downloaded on the existing persistent connection or on multiple recently created persistent connections to the same site, these download times can be averaged to obtain the estimate. Further, if the size of the resources being downloaded is known, the estimate also can be based on the historic download rate of recently created persistent connections to the remote site (see, e.g., col. 13, lines 24-40).

It would be obvious to a person skilled in the art at the time of the invention was made combine Hamamoto in view of Chmaytelli with Cordell to include the historic resource downloading time as taught in Cordell in order to effectively estimate current downloading time based on previous historic time stored.

Regarding claims 2, 16 and 32, Chmaytelli does not teach of the historical uploading information further includes a number of files uploaded and a total time the previous upload actually took to complete, wherein the upload start marker is a timestamp and wherein the new upload start marker is a new timestamp.

Hamamoto teaches as follows:

The historical uploading information further includes a number of files uploaded (items for indicating file transfer) and a total time the previous upload actually took to

complete (transfer start time and end time), wherein the upload start marker is a
timestamp and wherein the new upload start marker is a new timestamp (see, e.g., col.
6, line 63 to col. 7, lines 20 and figure 3).

It would be obvious to a person skilled in the art at the time of the invention was
made combine Hamamoto in view of Cordell with Chmaytelli in order to effectively
collect and manage data transfer operations.

Regarding claims 4, 18 and 34, Chmaytelli teaches as follows:

If a match or likeness is not found, the upload time estimate is derived by
computing a ratio between the upload size and the average transfer rate (see, e.g.,
page 2, paragraph [0017]).

Regarding claims 10 and 40, Chmaytelli does not teach of determining whether
any previous uploads have been tracked and based on existence or nonexistence of
historical uploading information for any previous uploads determining whether or not to
provide the upload time estimate.

Hamamoto teaches as follows:

The service search unit (12 in figure 1) searches the matched search results from
the service-management-unit comparing a search condition and reflects the search
results (see, e.g., col. 9, lines 1-36). Therefore the service search unit determines
whether any previous file transfer has been tracked and existence.

It would be obvious to a person skilled in the art at the time of the invention was
made combine Hamamoto in view of Cordell with Chmaytelli in order to effectively
collect and manage data transfer operations.

Regarding claims 11, 24 and 41, they are rejected for similar reason as presented above per claims 10 and 40.

Hamamoto further teaches as follows:

Determining whether historical upload information for the one of more previous uploads has been retrieved from a data structure (see, e.g., col. 6, lines 5-9 and figure 3) and if not retrieve the historical upload information for the one of more previous uploads (the service search unit searches the matched search results from the service-management-unit comparing a search condition and reflects the search results, see, e.g., col. 9, lines 1-36).

Regarding claims 12, 25 and 42, they are rejected for similar reason as presented above per claims 11, 24 and 41

Regarding claims 13, 14, 26, 27, 43 and 44, it would be obvious to a person skilled in the art at the time of the invention was made limit the number of previous uploads stored due to the storage limitation.

Regarding claim 15, it is rejected for similar reason as presented above per claims 1 and 29.

Chmaytelli further teaches as follows:

Initiate uploading of one or more files selected for uploading and having, in total, an upload size (316 in figure 3 and figure 5b).

Hamamoto further teaches as follows:

Saving a timestamp representing a start time of the initiated uploading (transfer start time, see, e.g., col. 7, lines 21-41 and figure 3); and

tracking the upload of the selected files and upon completion of the upload

determining the stop time and the total time the upload took (see, e.g., col. 6, lines 5-

9).

Regarding claims 28 and 31, Chmaytelli teaches as follows:

The upload time estimate is provided to a user for display (time estimate, see,

e.g., figure 5b).

9.   Claims 6-9, 20-23 and 36-39 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Chmaytelli et al. (hereinafter Chmaytelli)((US Pub. No. 2002/0194325

A1) in view of Hamamoto et al. (hereinafter Hamamoto)(US Patent No. 6,622,151 B1)

and Cordell et al. (hereinafter Cordell)(U.S. Patent No. 5,778,372), and further in view of

Nakamura (US Patent No. 6,751,795).

Regarding claims 6, 20 and 36, Chmaytelli in view of Hamamoto do not teach of

comparing an upload size and timestamp to determine a match.

Nakamura teaches as follows:

A different detector (111 in figure 1) compares files to determine the file operation

(see, e.g., col. 2, line 62 to col. 3, line 12); and

the difference detector can find the difference by comparing time stamps, file

sizes, file versions and file data (see, e.g., col. 3, lines 66-67).

It would be obvious to a person skilled in the art at the time of the invention was

made combine Chmaytelli in view of Hamamoto and Cordell with Nakamura in order to

efficiently compare files stored at different locations based on the difference on time

stamp and file size.

Regarding claims 7-9, 21-23 and 37-39, Nakamura teaches as follows:

The difference detector can find the difference by comparing time stamps, file

sizes, file versions and file data (see, e.g., col. 3, lines 66-67). It would be obvious to a

person skilled in the art at the time of the invention was made have the well known

threshold range (equivalent to applicant's predetermined period) to determine a match.

Therefore, they are rejected for similar reason as presented above per claims 6, 20

and 36.

10.   Claims 30 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Chmaytelli et al. (hereinafter Chmaytelli)((US Pub. No. 2002/0194325 A1) in view

of Hamamoto et al. (hereinafter Hamamoto)(US Patent No. 6,622,151 B1) and Cordell

et al. (hereinafter Cordell)(U.S. Patent No. 5,778,372), and further in view of Fredlund et

al. (hereinafter Fredlund)((US Pub. No. 2003/0058457).

Regarding claims 30 and 46, Chmaytelli teaches a communication with wireless

network (see, e.g., page 1, paragraph [0014]).

Chmaytelli in view of Hamamoto do not specify a communication through the

Internet.

Fredlund teaches transferring images from a user to a service provider via the

Internet (see, e.g., page 3, paragraph [0033]).

It would be obvious to a person skilled in the art at the time of the invention was made combine Chmaytelli in view of Hamamoto and Cordell with Fredlund in order to establish a connection between the user's computer and a product provider.

Regarding claim 45, Fredlund teaches as follows:

The one or more files are self-extracting executable (.exe) files or files including JPEG (Joint Photographic Experts Group), GIF (Graphic Interchange Format), PNG (Portable Network Graphics) or BMP (bit mapped) formatted files (uploading image file name extension .jpg, see, e.g., page 5, paragraph [0049]). Therefore, it is rejected for similar reason as presented above per claim 30.

Regarding claim 47, Fredlund teaches as follows:

The host server is operative to send html (hypertext markup language) pages to the client, wherein the client is operative to upload the one or more files to the upload server, and wherein the upload server is operative to indicate failure or success of file uploads (uploading to the service provider using a web browser, see, e.g., page 1, paragraph [0003]). Therefore, it is rejected for similar reason as presented above per claim 30.

Regarding claim 48, Fredlund teaches as follows:

The html pages contain features of a file uploader tool, including file selection, via browsing and drag-drop operations, and wherein the upload time estimate changes along with additional selections of files before they are uploaded to the upload server (see, e.g., page 4, paragraph [0040]-[0041]). Therefore, it is rejected for similar reason as presented above per claim 30.

Regarding claim 49, Fredlund teaches as follows:

The files contain image data of photos and wherein further features of the

uploader tool include photo preview (see, e.g., page 4, paragraph [0040]). Therefore, it

is rejected for similar reason as presented above per claim 30.

Conclusion

11.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JEONG S. PARK whose telephone number is (571)270-

1597. The examiner can normally be reached on Monday through Friday 7:00 - 3:30

EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. P./
Examiner, Art Unit 2454

March 27, 2010

/NATHAN FLYNN/
Supervisory Patent Examiner, Art Unit 2454